

## LABOUR DEPARTMENT

The 25th September, 1972

No. 10613-4Lab-72/38358.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Haryana, Faridabad, in respect of the dispute between the workmen and the management of M/s. Haffard Rice Mill, Tarori (Karnal) :—

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,  
FARIDABAD

Reference No. 29 of 1972

*between*

SHRI SAT PAL CHOPRA WORKMAN AND THE MANAGEMENT OF M/S. HAFFARD  
RICE MILL, TARORI (KARNAL)

Present :—

Shri Harish Baghi, for the workman.  
Nemo, for the management.

## AWARD

This reference under section 10 sub-section (1) of clause (d) of the Industrial Disputes Act, 1947, has arisen out of the retrenchment case of Shri Sat Pal Chopra, the workmen of M/s. Haffard Rice Mills, Tarori (Karnal). The facts involved may briefly be stated as under :—

Shri Sat Pal Chopra concerned workmen joined service with the said management as a Second Mistry on 28th December, 1970 at Rs 160 per mensem. The management brought him under retrenchment with effect from 2nd February, 1972. He raised a demand for his reinstatement with continuity of previous service and full back wages but without any response from the management. Conciliation proceedings were started and on receipt of the failure report from the Conciliation Officer, Panipat, the Governor of Haryana has referred the dispute for adjudication to this Tribunal,—*vide* order No. ID/KNL/162-A-72/14761-65, dated 18th April, 1972 with the following term of reference.

Whether the retrenchment of Shri Sat Pal Chopra was justified and in order ? If not, to what relief is he entitled ?

The parties were called upon to put in their respective written statement. The workman has filed his statement of claim reiterating his above demand for reinstatement and back wages with the allegations that he was a regular worker having put in service for more than 240 actual working days and his retrenchment which was brought about without any notice showing valid reason and without complying with the requirements of section 25 F of the Industrial Disputes Act, 1947 was illegal, wrong and unjustified and he was entitled to be reinstated on the same job with continuity of his previous service as well as for payment of full back wages. On the other hand, the management took the plea that he was only a seasonal worker and his work being not up to the mark, the management was under no obligation to keep him in service after the season.

From the pleadings of the parties the only issue that arose for determination was as per the terms of reference stated above.

The management did not produce any evidence on 8th August, 1972 the date fixed for this purpose and an adjournment was sought which was objected to on behalf of the workman but was granted subject to the payment of Rs 25 as costs and the case was fixed for today. Costs have not been paid. No witness of the management is present. In fact none has appeared on behalf of the management to pursue the case. The evidence of the workman has, therefore, been recorded. He has made his detailed statement to the effect that he was a regular worker, having put in service for more than 240 working days and his work was quite satisfactory without any complaint of any kind. He has further stated that the management did not serve him with any retrenchment notice nor was he paid the notice pay or service compensation as required under section 25F of the Industrial Disputes Act, 1947. He has further stated that the post of the Second Mistry is still lying vacant and one Shri Dalip Singh who was appointed Head Mistry after his joining the service at Rs 350 per mensem is still in service although he has tendered his resignation.

Taking into consideration the facts stated above which have remained unchallenged or unrebutted by the management, I am satisfied that Shri Sat Pal Chopra was a regular workman of the said concern having put in service for more than one year and that the termination of his services by way of retrenchment has been brought about without complying with the mandatory provisions of section 25F of the Industrial Disputes Act, 1947 by not giving

him any retrenchment compensation and wages for one month in lieu of retrenchment notice. The statement of the concerned workmen finds full support in the testimony of Shri Harish Baghi, General Secretary, Industrial Workers Union, Karnal District, who is supposed to be in the know of such matters connected with the labour. The retrenchment in question cannot, in the circumstances, be held to be justified and in order and I hold accordingly.

The award, in the result, is made in favour of Shri Sat Pal Chopra, concerned workman, and the management is directed to reinstate him with continuity of his previous service as well as to pay his full back wages. In the circumstances, the workman is further entitled to Rs 50 as costs of the present proceedings from the management.

Dated the 8th September, 1972.

O. P. SHARMA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 997, dated the 14th September, 1972

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 8th September, 1972.

O. P. SHARMA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 10615-4 Lab-72/38360.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workmen and the management of M/s Technological Institute of Textiles (T.I.T.) Mills, Bhiwani.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD

Reference No. 60 of 1967

Between

THE WORKMEN AND THE MANAGEMENT OF M/S TECHNOLOGICAL INSTITUTE  
OF TEXTILES (T.I.T.) MILLS, BHIWANI

Present—

Shri Sagar Ram Gupta, for the workmen.  
Shri B.R. Ghai and Shri N.M. Jain, for the management.

#### AWARD

The facts leading to this reference under clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, may, in short, be stated as under :—

Sarvshri Ganesh Dutt and Nand Kishore, concerned workmen, are ex-employees of the Technological Institute of Textiles (T.I.T.), Bhiwani. On 30th August, 1964, there was a strike in the third shift of the mills starting from 9 p.m. According to the case of the management, both these workmen were instrumental in bringing about the said strike which was illegal by not reporting themselves for duty as well as by preventing others from attending to their duties under threats of intimidation and physical force with the result that there was complete stoppage of work in the shift.

The management served both the workmen with charge-sheets alleging that their above-said acts in bringing about illegal strike amounted to misconduct as defined under para 14, sub para 3 (b) of the Certified Standing Orders by which they were governed. They submitted their explanations denying the said charges which was, however, not found to be satisfactory and an enquiry into their conduct was directed by the management and on receipt of the enquiry report the management decided not to keep them in service. Since reference No. 4 of 1964 in respect of the demand of the workmen for higher bonus for the year 1962-63 was pending at that time, permission of the Tribunal, as contemplated under section 33(3) of the Industrial Disputes Act, 1947, was necessary, both being protected and interested workmen and these applications were moved by the management simultaneously with the taking of the aforesaid decision to dismiss them from service. They were also placed under suspension by order of the General Manager of the Mills pending decision of the permission application.

The workmen contested the above applications as being based upon wrong allegations of misconduct, considerations of victimisation, unfair labour practice and *mala fides* on the part of the management. Shri K.L. Gosain, the then Presiding Officer of the Industrial Tribunal, Punjab, dismissed both the applications,—*vide* order dated 31st December, 1965. and the permission asked for by the management was declined.

After the above decision of the permission application both the workmen reported for duty. Shri Ganesh Dutt was not allowed to resume duty at all while in the case of Shri Nand Kishore the management agreed to take him back on duty but after a considerable time Shri Ganesh Dutt raised a demand for his reinstatement and payment of his back dues. Shri Nand Kishore also demanded wages for the period of his suspension but the management did not concede their above demands which gave rise to industrial disputes. The Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947,

referred the disputes for adjudication to this Tribunal,— *vide* order No. 172-SFIII-Lab/67-4740, dated 31st March, 1967 the terms of reference being as given under :—

- (1) Whether the action of the management in not allowing Shri Ganesh Dutt to resume duty is justified and in order ? If not, to what relief he is entitled ?
- (2) Whether Shri Nand Kishore is entitled to any wages during his period of suspension ? If so, with what details ?

On receipt of the order of reference, usual notices were given to the parties and they put in their respective written statements. The workmen filed their statements of claim reiterating their above demands raised earlier through their demand notices. The management contested their claim on the ground that since they were guilty of serious misconduct in the discharge of their duties by bringing about illegal strike in the third shift of the mills on 30th August, 1964 and the same having been fully established against them in the domestic enquiry, the management was within its right to ask for the permission of the Tribunal to dismiss them from service as well as to place them under suspension pending decision of the permission applications. It was further contended that the management had filed a writ petition against the order dated the 31st December, 1965 of the Tribunal had filed writ petitions which had been admitted and were still pending before the High Court and as such the order dated 31st December, 1965, could not be considered as a final adjudication in the matter. Further proceedings in the case were, therefore, stayed, *vide* order dated the 25th May, 1967, till the disposal of the said writ petitions which were finally allowed by the Hon'ble the High Court and the permission applications were remanded for fresh decision.

Shri Nand Kishore having resigned his service with effect from 1st August, 1967, the permission application moved by the management asking for leave to dismiss him service thus become infructuous and was not pressed by the management and was accordingly dismissed, *vide* order dated 3rd September, 1971. The other permission application in respect of Shri Ganesh Dutt has been allowed, *vide* order dated the 1st September, 1972 and the management has been granted the permission asked for to dismiss him from service on the alleged charge of misconduct in bringing about illegal strike in the mills.

In view of what has been stated above there is not much to discuss with regard to the demands the subject matter of the present reference. It has vehemently been argued on behalf of the workmen that in the absence of any specific term of contract, in the instant case the certified standing orders, the management had no right to suspend these workmen without payment of their wages and after the dismissal of the permission application *vide* order dated 31st December, 1965, it was incumbent upon the management to allow them to resume their duties. There is no doubt that according to the general principle of law an employee cannot be suspended without payment of his wages in the absence of any specific term or condition of his employment in this regard. The proceedings relating to permission applications under section 33 of the Industrial Disputes Act, 1947 are, however, an exception to this general rule. After a charge in respect of any act or acts of misconduct against a workman has been duly established in a fair and proper domestic enquiry, the management is not under obligation to keep him in service but if some dispute is pending adjudication before a Tribunal or Court in which the said workman is interested, the disciplinary action can be taken by the management only after seeking the permission of the Tribunal or the Court as the case may be. However, in such a case the management has the implied right to suspend the contract of employment by placing the delinquent workman under suspension pending said permission, and that being so, it is not under obligation to pay him the wages during the intervening period. If ultimately the permission is granted, the contract of employment comes to an end with effect from the date of the suspension and in that event the question of paying any wages to the concerned workmen would not arise. If, however, the permission asked for by the management is declined the suspended contract of employment would *ipso facto* be revived and the workman would be entitled to his entire wages for the period of suspension. So, it cannot be said that on the facts given above the management had no inherent right to place these workmen under suspension.

The management having been accorded the permission asked for to dismiss Shri Ganesh Dutt from service, *vide* order dated 1st September, 1972 as pointed out above, the question of his joining the duty or payment of any wages to him by the management does not arise. The case of Shri Nand Kishore who was also said to be instrumental in bringing about the illegal strike in the Mills is no better especially when he has resigned service in the mills.

For the reasons aforesaid, the concerned workmen are not entitled to any relief, the issues involved are held against them and the award is made accordingly. In the circumstances there shall be no order as to costs.

Dated the 8th September, 1972

O. P. SHARMA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 962, dated 14th September, 1972

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 8th September, 1972.

O. P. SHARMA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.